

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

Montana State Office Decision Addressing Oil and Gas Lease
Termination, Class I and Class II Reinstatement Provisions,
and Rental and Royalty Reduction Requests



United States Department of the Interior
BUREAU OF LAND MANAGEMENT

3108 (MT 922)
Serial No. SDM 43977

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

April 8, 1988

DECISION

J.R. Gas, Inc.
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Belle Fourche, South Dakota 57717

Oil and Gas

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Oil and Gas Lease Terminated
Petition for Class I Reinstatement Denied
Additional Requirements for Class II Reinstatement
Request for Reduced Royalty and Rental Denied

Oil and Gas Lease SDM 43977 was issued effective September 1, 1979, and contained 2240.00 acres. Beginning with lease year September 1, 1984, rental was increased to \$2 per acre because part of the lands were included in a known geologic structure. On September 3, 1987, a partial rental payment in the amount of \$2800 was received at Minerals Management Service (MMS) accompanied by a letter dated August 30, 1987, stating that the leaseholder wished to drop all but 1400.00 acres of the lease. The MMS accepted the partial rental payment, classified it as timely, and forwarded the letter/partial relinquishment to the Bureau of Land Management (BLM). The partial relinquishment was received in BLM's Montana State Office on September 14, 1987.

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Title 43 CFR 3108.1 states that a lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment in the proper BLM office. It also states a relinquishment shall take effect on the date it is filed. Since the relinquishment was not received in the proper BLM office until September 14, 1987, it cannot be considered effective until September 14, 1987.

The IBLA ruled in its Decision B.J. Bradshaw, 79 IBLA 85 (1979), that an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities will automatically terminate on the anniversary date of the lease upon failure of lessee to pay the minimum annual rental, despite a partial payment submitted on the basis of a partial relinquishment which was ineffective.

Based on the regulations and the IBLA Decision cited herein, we must hold that oil and gas lease SDM 43977 terminated as of September 1, 1987, for the reason that the full amount of the rental was not received on or before the anniversary date. The partial relinquishment had no effect since it was not filed in accordance with the regulations.

2. Petition for Class I Reinstatement

On November 24, 1987, this office received a petition for a Class I Reinstatement along with the required \$25 filing fee for oil and gas lease SDM 43977. Full rental was received in this office November 24, 1987.

In 43 CFR 3108.2-2 it is stated: The authorized officer may reinstate a lease which has terminated for failure to pay on or before the anniversary date the full amount of rental due, provided that; 1) such rental was paid or tendered within 20 days after the due date.

The IBLA ruled in its Decision Jerald A. Waters, 97 IBLA 150 (1980), that the Department of Interior has no authority to make a Class I Reinstatement of a terminated lease where rental payment is not paid or tendered within 20 days after the due date.

It is indicated in the petition that partial rental and a partial relinquishment were filed together at MMS as instructed by a BLM employee, and that "the question is whether petitioners were justified in relying upon this information and whether it can be said that they exercised reasonable diligence in ascertaining the proper procedure." In its Decision Monica V. Rowland, 90 IBLA 349 (1986), the IBLA ruled that even assuming that appellant could show that the failure to pay was justifiable or not due to a lack of reasonable diligence, Class I Reinstatement is unavailable to appellant because of her failure to pay the rental within 20 days after the anniversary date.

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The IBLA stated in its Decision, Dominic D. Demicco, 92 IBLA (1986), . . . the statutory provisions for automatic termination of leases and the conditions required for their reinstatement have been clearly set forth by Congress, 30 U.S.C. 188 (1982). They have been further defined by the Department's regulations. It is well established that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Title 44 U.S.C. 1507, (1982); . . . At best, appellant's failure to inform himself about this matter can be characterized as inadvertence. It does not constitute justification for making late payment within the meaning of 30 U.S.C. 188(c) (1982).

Three IBLA Decisions in which reinstatements were allowed were cited in the petition: (1) Joseph E. Steger, 20 IBLA 206 (1975), where an illegible courtesy notice was received from the BLM; (2) Richard L. Rosenthal, 45 IBLA 146 (1980), where the lease transmitted a check for rental to the wrong BLM office, which received the payment 14 days prior to the anniversary date, but took no action to either forward the check to the proper office or return it to the lessee until the anniversary date of the lease; and (3) in Nola Grace Ptasynski, 82 IBLA 48 (1984), the issue involved lands in a terminated lease which were offered under the simultaneous program, Ptasynski was the successful applicant in the drawing, and after the drawing, a decision was made to reinstate the terminated lease. The terminated lease was reinstated and Ptasynski was protesting the reinstatement. We are of the opinion that the three cases are irrelevant to the situation in SDM 43977.

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Monty Cranston, Inc., 86 IBLA 322 (1985), also supports our Decision in the case at hand. One of the headnotices states that where the anniversary date of an oil and gas lease falls on a day when the proper office for payment is not open, a partial rental payment together with a partial relinquishment personally delivered to the proper state office on the next official working day serves to extend that part of the lease covered by the rental payment.

The petition for Class I Reinstatement of oil and gas lease SDM 43977 is hereby denied. The \$25 filing fee was earned upon receipt and cannot be refunded.

3. Petition for Class II Reinstatement

On November 24, 1987, this office received a petition for a Class II Reinstatement for oil and gas lease SDM 43977 which automatically terminated on September 1, 1987, for failure to pay the full amount of rental due. A partial rental payment was received at MMS on September 3, 1987, accompanied by the lessee's letter indicating he wished to relinquish all but 1400 acres of the lease. MMS accepted the partial payment and forwarded the partial relinquishment to this office. The partial relinquishment was received in this office on September 14, 1987. The petition indicates that partial rental and the partial relinquishment were filed together at MMS as instructed by a BLM employee, and requests that the lease be reinstated only as to the unrelinquished acreage. Full rental due was received in this office on November 24, 1987.

Title 43 CFR 3108.1 states that a lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment in the proper BLM office. It also states a relinquishment shall take effect on the date it is filed.

In its Decision B. J. Bradshaw, 44 IBLA 181 (1979), the IBLA ruled that an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities will automatically terminate on the anniversary date of the lease upon failure of lessee to pay the minimum annual rental, despite a partial payment submitted on the basis of a partial relinquishment which was ineffective.

Title 43 CFR 3108.2-2(a) states: "The authorized officer may, if the requirements of this section are met, reinstate an oil and gas lease which was terminated by operation of law for failure to pay rental timely when the rental was not paid or tendered within 20 days of the termination date and it is shown to the satisfaction of the authorized officer that such failure was justified or not due to a lack of reasonable diligence, or no matter when the rental was paid, it is shown to the satisfaction of the authorized officer that such failure was inadvertent."

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The IBLA ruled in its Decision Dominic D. Demicco, 92 IBLA 378 (1986), . . . the statutory provisions for automatic termination of leases and the conditions required for their reinstatement have been clearly set forth by Congress, 30 U.S.C. 188 (1982). They have been further defined by the Department's regulations. It is well established that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. 1507, 1510 (1982); . . . At best, appellant's failure to inform himself about this matter can be characterized as inadvertence. It does not constitute justification for making late payment within the meaning of 30 U.S.C. 188(c) (1982).

We are of the opinion that late payment was due to inadvertence and have determined that the lease may be considered for reinstatement under the provisions of Class II. However, since the partial relinquishment was not effective until September 14, 1987, 13 days after the date of automatic termination, the petition for Class II reinstatement is being considered for the entire acreage of the lease.

Even though the Class II reinstatement is being considered for the entire acreage of the lease, it needs to be pointed out that the relinquishment is effective as of September 14, 1987. In its Decision Roy W. Reed, 7 IBLA 321 (1972), the IBLA ruled that no action is required by the Secretary in connection with relinquishment. In fact, he is precluded from interfering with the voluntary act of the lessee. Thus, once a relinquishment is filed, there is nothing upon which the Secretary can act. Relinquishment is purely a unilateral act on the part of the lessee. It must be concluded that when a lessee files his relinquishment of an oil and gas lease in the appropriate land office, he exercises the right granted to him by section 30(b) of the Mineral Leasing Act; he voluntarily ends his lease relationship with the United States as of the date of the filing of the relinquishment.

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Enclosed are two copies of "Oil and Gas Lease Amendment" showing the annual rental of \$7 per acre and the royalty rate of 16-2/3 percent which must be executed and returned to this office. Upon receipt of the executed Amendment forms, and following 30 days after the date of publication of proposed reinstatement in the Federal Register, a Decision will be issued reinstating the lease effective September 1, 1987.

If the signed Lease Amendment forms are not filed in this office within 30 days after receipt of this Decision, the petition for Class II reinstatement will be denied.

Once the lease has been reinstated as of September 1, 1987, we will process the partial relinquishment and the lands that will then remain in the lease will be 1400.00 acres.

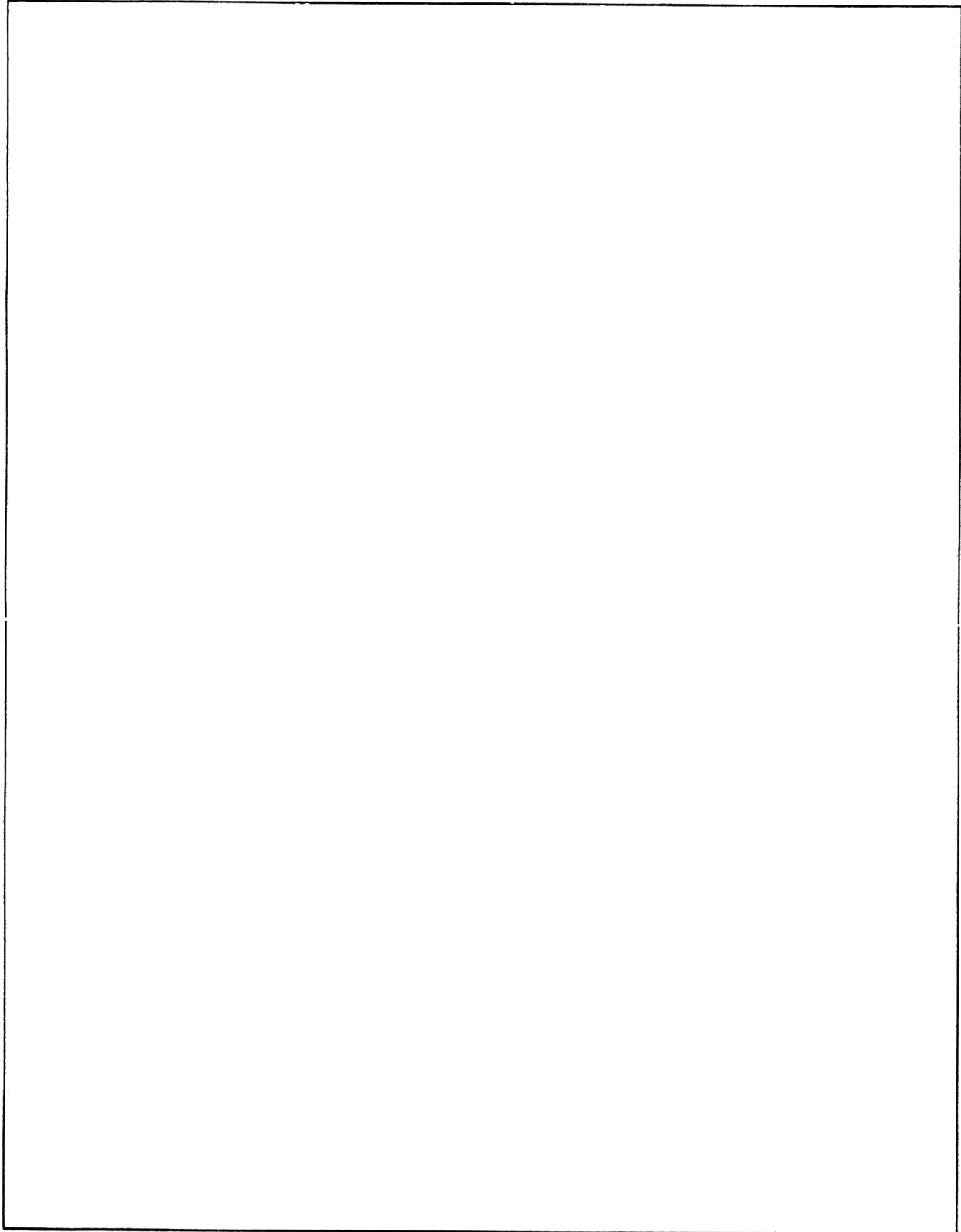
4. Reduced Rental and Royalty Rates

On November 24, 1987, a petition for Class II Reinstatement was filed for terminated oil and gas lease SDM 43977. The petition included a request for reduced rental and royalty if the Class II Reinstatement is granted. There has been no production on the lands.

Title 43 CFR 3103.3-1(a) states the following royalty rates shall be paid in amount or value of the production removed or sold from the lease: (ii) 16-2/3 percent royalty on noncompetitive leases reinstated under 3108.2-3 of this title . . . Title 43 CFR 3108.2-3(2) states that after determining that the requirements for filing of the petition for reinstatement have been timely met, the authorized officer may reinstate the lease if: (iv) An agreement has been signed by the lessee and attached to and made a part of the lease specifying future rentals at the applicable rates specified for reinstated leases in 3103.2-2 of this title and future royalties at the rates set in 3103.3-1 of this title for all production removed or sold from such lease . . . Title 43 CFR 3108.2-3(f) states that the authorized officer may . . . reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes, if he/she determines there are either economic or other circumstances which could cause undue economic hardship or premature termination of production.

The IBLA ruled in its Decision Gulf Oil Corp., 83 IBLA 289, that pursuant to sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. 188 (1982), the royalty rate imposed on a reinstated oil and gas lease may not be less than 16-2/3 percent unless the Secretary finds that there are uneconomic or other circumstances which could cause undue hardship or premature termination of production, or if in the Secretary's Judgement, it would be otherwise equitable to reduce the royalty rate. Where a lessee fails to provide credible evidence of such circumstances, a reduction in royalty

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This Decision may be appealed to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and the enclosed Form 1842-1. If an appeal is taken, Notice of Appeal must be filed in the Montana State Office at the above address within 30 days from receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. As appellant you will have the burden of proving, by presenting positive and substantial evidence, where this Decision is in error. This Decision is final, absent an appeal.

/s/ Cynthia L. Embretson

Cynthia L. Embretson
Chief, Fluids Adjudication Section

2 Enclosures

- 1 - Oil and Gas Lease Amendment (1 p.)
- 2 - Appeal Information Sheet (1 p.)